

**ARKANSAS COURT OF APPEALS**

DIVISION I

No. CA09-691

JOY L. DESPAIN

APPELLANT

V.

FRANKLIN ELECTRIC COMPANY  
and HELMSMAN MANAGEMENT  
SERVICES, LLC

APPELLEES

**Opinion Delivered** November 18, 2009

APPEAL FROM THE ARKANSAS  
WORKERS' COMPENSATION  
COMMISSION  
[NO. F710240]

AFFIRMED

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**JOSEPHINE LINKER HART, Judge**

Appellant, Joy L. DeSpain, appeals from the Arkansas Workers' Compensation Commission's decision concluding that her claims for benefits related to injuries to her index and middle finger on her right hand and her thumb on her left hand were barred by the applicable statute of limitations. We affirm the Commission's decision.<sup>1</sup>

Appellant's job with appellee Franklin Electric Company required her to use both of her thumbs extensively in the assembly of motors. Appellant developed problems with her left thumb in 1993, and she received medical treatment in December 1993. In November and December 1994, she began having problems with her right index and middle fingers, and she

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<sup>1</sup>Given this disposition, we need not address appellant's challenge to the Commission's alternative reason for denying benefits.

received medical treatment during those months. She continued to have problems with these injuries. In 1999 or 2000, she changed jobs at Franklin Electric Company, thinking that a job as a janitor would be easier on her hands.

On November 22, 2005, while picking up a sleeve of Styrofoam cups, her left thumb popped. Appellant suffered increased pain to the same area of the thumb that she had been experiencing before that date. She received medical treatment not only for her thumb but also for her two fingers, even though the fingers were not affected by the incident. In controverting the compensability of the claims, appellees argued in part that appellant's claims were barred by the applicable statute of limitations.

In an order denying benefits, the administrative law judge noted that appellees initially accepted the injuries as compensable and paid some compensation benefits in the form of medical treatment in 1993 and 1994, and appellant did not file a claim for additional benefits relating to those conditions until 2007. The ALJ also noted that appellant testified that she continued to have problems with her thumb and fingers after 1993 and 1994, but did not seek any additional medical treatment until 2005, and did not file a claim until 2007. The ALJ found that appellant's 2007 claim for benefits was more than two years from the date of her 1993 and 1994 injuries to her thumb and fingers. Further, the ALJ found that her 2007 claim was more than one year from the date of the last payment of compensation for those injuries, which was in 1993 and 1994. Thus, the ALJ concluded that her claims were barred by the statute of limitations.

While the ALJ noted that the 2005 incident regarding her left thumb could give rise to a claim for benefits, he noted that appellant testified that she continued to have problems with her left thumb after 1993, and that while the 2005 incident caused an increase in her pain, the pain subsided in a few days, and she was left with the same problem that had existed prior to the 2005 incident. The ALJ found that while appellant may have had additional pain for a few days after the 2005 incident, thereafter her complaints were the same as since 1993. The ALJ concluded that appellant failed to establish that she suffered an injury or aggravation to her left thumb in 2005. The Commission adopted the ALJ's opinion.

On appeal, appellant argues in part that her claims were not barred by the statute of limitations. Regarding the time limitations for an initial claim for workers' compensation, "[a] claim for compensation for disability on account of an injury . . . shall be barred unless filed with the Workers' Compensation Commission within two (2) years from the date of the compensable injury." Ark. Code Ann. § 11-9-702(a)(1) (Supp. 2009). As for the time limitations for filing a claim for additional compensation, "[i]n cases where any compensation, including disability or medical, has been paid on account of an injury, a claim for additional compensation shall be barred unless filed with the commission within one (1) year from the date of the last payment of compensation or two (2) years from the date of injury, whichever is greater." Ark. Code Ann. § 11-9-702(b)(1).

This case involves scheduled injuries. The statute of limitations for a scheduled injury begins to run when the scheduled injury becomes apparent to the claimant. *Minnesota Mining*

*Et Mfg. v. Baker*, 337 Ark. 94, 989 S.W.2d 151 (1999). On appeal, we view the evidence in the light most favorable to the Commission's decision and affirm if substantial evidence supports the decision. *Id.*

We affirm the Commission's decision. There was evidence relied on by the ALJ and the Commission indicating that appellant's problems with her thumb and fingers were apparent to her in 1993 and 1994, and that although she complained about her thumb in 2005, this was not a new injury, because the pain resolved within a few days, leaving her with her original problem. Appellant's 2007 claim for benefits was more than two years from the date of her 1993 and 1994 injuries to her thumb and fingers. Further, her 2007 claim was more than one year from the date of the last payment of compensation for those injuries, which was in 1993 and 1994. Thus, substantial evidence supports the Commission's decision that her claims were barred by the statute of limitations.

Affirmed.

VAUGHT, C.J., and ROBBINS, J., agree.